

APPEAL NO. 010699

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 12, 2001. The hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury on _____; in addition, having found no compensable injury, the hearing officer determined that the claimant had no disability. The claimant appeals and seeks reversal. The respondent (carrier) requests that the claimant's appeal be denied for being untimely and that the hearing officer be affirmed in all respects.

DECISION

A timely appeal not having been filed, our jurisdiction has not been invoked. Therefore, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Pursuant to Section 410.202(a), for an appeal to be considered timely, it must be filed within 15 days of the date of receipt of the hearing officer's decision. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994; Texas Workers' Compensation Commission Appeal No. 94111, decided March 10, 1994; Texas Workers' Compensation Commission Appeal No. 941225, decided October 24, 1994.

Records of the Commission reflect that the hearing officer's decision was distributed to the parties on February 22, 2001, under a cover letter of the same date. Rule 102.5(d), effective August 29, 1999, provides that, unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed, which in this case would be February 27, 2001. However, in her appeal the claimant states that she received the hearing officer's decision on February 22, 2001. We have previously held that a signed acknowledgment of an earlier date of receipt prevails over the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 950972, decided August 7, 1995. See *also* Texas Workers' Compensation Commission Appeal No. 001921, decided September 25, 2000, and Texas Workers' Compensation Commission Appeal No. 010112, decided February 13, 2001.

The claimant had 15 days from February 22, 2001, or until Friday, March 9, 2001, to mail her request for review to the Commission. The claimant's appeal bears a date of March 6, 2001, and the envelope bears a postmark of March 9, 2001, so mailing of the appeal was timely, either going by the claimant's stated received date or her deemed

receipt date. However, the appeal was not received by the Commission until April 5, 2001. This was more than 20 days after both the date claimant stated she received the decision and order and the date she was deemed to have received it. The envelope containing the claimant's appeal reflects that she mailed her appeal to an incorrect address (wrong zip code) despite the mailing instructions in the Commission's cover letter of February 22, 2001, stating the correct mailing address for appeals. Therefore, the claimant's appeal is untimely.

The decision and order of the hearing officer have become final under Section 410.169.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge